

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ARROWOOD INDEMNITY CO.,	§	1:10-CV-02871-SO
	§	
Plaintiff,	§	JUDGE OLIVER
	§	
vs.	§	
	§	
THE LUBRIZOL CORPORATION	§	
	§	
Defendant.	§	
	§	

**THE LUBRIZOL CORPORATION’S MOTION FOR PARTIAL SUMMARY
JUDGMENT AGAINST ARROWOOD INDEMNITY COMPANY
ON THE DUTY TO DEFEND**

This case arises from The Lubrizol Corporation’s (“Lubrizol”) claim for insurance coverage against its primary commercial general liability insurer, Arrowood Indemnity Company (“Arrowood”) for costs incurred as a result of Lubrizol’s alleged liability for the investigation and remediation of the Patrick Bayou Superfund Site in Harris County, Texas. The United States Environmental Protection Agency identified Lubrizol as a Potentially Responsible Party for the Site, and ordered Lubrizol to fund a Remediation Investigation/Feasibility Study (RI/FS) pursuant to an Agreed Order on Consent (collectively referred to as the “EPA CERCLA Action”).

Lubrizol tendered the EPA CERCLA Action to Arrowood in 2002, but Arrowood has refused to defend Lubrizol and, instead, filed this lawsuit in December, 2010. Contrary to the vast majority of jurisdictions across the nation, including Ohio, Arrowood claims that it only has to defend lawsuits filed in a court of law, not administrative actions like the EPA CERCLA Action. Arrowood also asserts that it was released from its coverage obligations for Patrick

Bayou under a 1994 settlement agreement, even though – as Arrowood itself previously admitted – the limited release in that agreement does not apply to Patrick Bayou. Accordingly, for the reasons set forth in the attached Memorandum in Support, Lubrizol now moves for partial summary judgment that Arrowood has a duty to defend it in the EPA CERCLA Action under Policy number GLA 41-19-40 for the period July 10, 1968 through July 10, 1971.

Respectfully Submitted,

Suzanne F. Day (0062292)
Julie A. Harris (0065246)
The Lubrizol Corporation
29400 Lakeland Boulevard

Wickliffe, Ohio 44092
Phone: (440) 347-5073
Fax: (440) 347-5219

E-mail: suzanne.day@lubrizol.com
E-mail: julie.harris@lubrizol.com

/s/ Jodi D. Spencer

Joseph P. Thacker (0013039)
THACKER MARTINSEK LPA
3235 Levis Commons Blvd
Perrysburg, OH 43551
(419) 931-6910 – phone
(419) 931-6911 – fax
jthacker@tmlpa.com

Jodi D. Spencer (0074139)
THACKER MARTINSEK LPA
2330 One Cleveland Center
1375 East Ninth Street
Cleveland, OH 44114
(216) 456-3840 – phone
(216) 456-3850 – fax
jspencer@tmlpa.com

*Counsel for Defendant,
The Lubrizol Corporation*

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2012, a true and correct copy of the foregoing was served on counsel through the Court's ECF system.

/s/ Jodi D. Spencer

Jodi D. Spencer